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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

March 19, 2002

In re Application of: Blissard *et al.*
Serial No. 09/518,763
Filed: 3/3/00
For: STABLE CELL LINES RESISTANT TO APOPTOSIS AND
NUTRIENT STRESS AND METHODS OF MAKING SAME
Examiner: Guzo, D.
Art Unit: 1636
Attorney Docket No.: BTI-44

TECH CENTER 1600/2900

APR 12 2002

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PETITION UNDER 37 CFR § 1.137(b) FOR REVIVAL OF
AN APPLICATION FOR PATENT ABANDONED UNINTENTIONALLY

ATTENTION: OFFICE OF PETITIONS
HONORABLE COMMISSIONER OF
PATENTS AND TRADEMARKS
Washington, D.C. 20231

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APR 11 2002

OFFICE OF PETITIONS

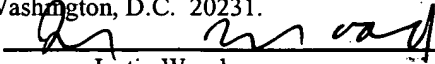
The above-identified application became abandoned on October 12, 2001, for failure to file a timely and proper response to the Final Office Action, which was mailed on April 12, 2001.

Applicant hereby petitions for the revival of this application. This petition is filed within one year of the date of abandonment.

A grantable petition requires the following items:

- (1) Petition fee;
- (2) Proposed response;
- (3) Verified statement that the abandonment was unintentional.

1. Petition fee:

| | |
|--|---------------|
| CERTIFICATE OF CERTIFIED MAILING | |
| CERTIFIED MAIL NO: 70011940 000143272196 | DATE: 3/27/02 |
| I hereby certify that this paper is being deposited with the U.S. Postal Service as Certified Mail with return receipt requested to Addressee service under 37 CFR 1.8 on the date indicated above and is addressed to Commissioner of Patents and Trademarks, Washington, D.C. 20231. | |
|  Justin Wood | |

04/11/2002 RNDNDAF1 00000025 09518763

640.00 DP

01 FC:241

The required fee under 37 CFR § 1.17(m) for a small entity of \$640 is enclosed.
Applicant is a small entity, and a small entity statement was previously filed.

The Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment to Deposit Account No. 02-0910.

2. Proposed response:

Enclosed is the proposed response to the above-noted Final Office Action of April 12, 2001, in the form of a Reply to the Final Office Action including the required new sequence listing.

3. Verified statement:

This application became abandoned unintentionally.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application, any patent issuing thereon, or any patent to which this verified statement is directed.

Respectfully Submitted:

--Blissard et al.--

By: Thomas T. Aquilla
Thomas T. Aquilla - Reg. No. 43,473
Attorney for Applicant

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Dated: March 19, 2002



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

March 26, 2002

In re Application of: Blissard *et al.*
Serial No. 09/518,763
Filed: 3/3/00
For: **STABLE CELL LINES RESISTANT TO APOPTOSIS AND
NUTRIENT STRESS AND METHODS OF MAKING SAME**
Examiner: Guzo, D.
Art Unit: 1636
Attorney Docket No.: BTI-44

**PETITION UNDER 37 CFR § 1.181 FOR WITHDRAWAL OF HOLDING OF
ABANDONMENT NOT OTHERWISE DELEGATED**

ATTENTION: OFFICE OF PETITIONS
HONORABLE COMMISSIONER OF
PATENTS AND TRADEMARKS
Washington, D.C. 20231

TECH CENTER 1600/2900

APR 12 2002

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The above-identified application became abandoned on October 12, 2001, for failure to file a proper response to the Final Office Action, which was mailed on April 12, 2001.

Applicant hereby petitions for the revival of this application and for withdrawal of the holding of abandonment, under 37 CFR § 1.181.

A grantable petition requires the following items:

(1) Petition fee of \$130

(2) Statement of the facts involved and points to be reviewed, and the action requested.

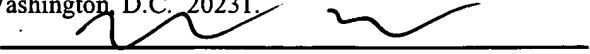
1. Petition fee:

The required fee under 37 CFR § 1.17(h) of \$130 is enclosed.

RECEIVED

APR 11 2002

OFFICE OF PETITIONS

| | |
|--|----------------------|
| CERTIFICATE OF CERTIFIED MAILING | |
| CERTIFIED MAIL NO: <u>7001 1940 0001 4327 2795</u> | DATE: <u>5/27/02</u> |
| I hereby certify that this paper is being deposited with the U.S. Postal Service as Certified Mail with return receipt requested to Addressee service under 37 CFR 1.8 on the date indicated above and is addressed to Commissioner of Patents and Trademarks, Washington, D.C. 20231. | |
|  Justin Wood | |

04/11/2002 AHNDADF1 0000000025 69181560

130.00 OP

02 FC:122

The Commissioner is hereby authorized to charge any additional fees that may be required, or credit any overpayment to Deposit Account No. 02-0910.

2. Statement of the facts involved, points to be reviewed, and the action requested:

On August 9, 2001, a Proposed Amendment After Final Rejection was forwarded to the Examiner for his review and comment, prior to filing a formal amendment. Subsequently, on August 13, 2001, a telephone interview was held with the Examiner to discuss the Proposed Amendment. At that time, the Examiner stated that the Proposed Amendment would put the claims in condition for allowance, thus a formal Amendment After Final Rejection was filed on August 13, 2001.

On August 29, 2001, an Advisory Action was received, indicating that the Amendment After Final Rejection filed on August 13, 2001, was insufficient to place the application in condition for allowance. The Advisory Action stated that "it appears that Applicants intended to cancel claims 10-16 but inadvertently failed to do so" and that "Applicants need to file a new sequence listing because amino acid and nucleotide sequences in Fig. 1 have not been included in the previously filed sequence listing."

In fact, claims 10-16 were cancelled in the Amendment After Final Rejection filed on August 13. More particularly, the Amendment After Final Rejection states that "Claims 1-4, 6, 7, 9-14, 16 and 19 are cancelled" at page 4, paragraph 5, that "Claim 15 is cancelled" at page 4, paragraph 6, and again that "Claims 1-2, 4-7, 9-17, 19, 26-34 and 36-42 are cancelled" at page 5, in both the first and second complete paragraphs. However, in the Remarks section of the Amendment, the summary states only that "Claims 45-50 remain in this case, claims 1-7, 9, 17, 19, 26-34 and 36-44 being cancelled, and new claims 45-50 being added by this response." Thus, although the Remarks section is unclear, claims 10-16 were cancelled by the response.

In response to the Advisory Action of August 29, 2001, rather than traversing the Examiner, another Amendment After Final Rejection was filed on September 12, 2001, providing the required corrected sequence listing and again canceling claims 10-16. Subsequently, on September 28, 2001, a telephone interview was held with the Examiner to

discuss the Amendment. At that time, the Examiner confirmed that the claims were in condition for allowance. Thus, Applicant expected to receive a Notice of Allowance.

The next time any communication was received from the PTO regarding this case was on January 2, 2001, when the Examiner telephoned Applicant's Attorney, stating that the application was now abandoned, because the substitute sequence listing contained an error. It should be noted that, although PatentIn was used to generate the sequence listings, and Checker was used to verify the sequence listing, these programs did not indicate that there were any errors.

The PTO did not provide any period to respond to the errors found in the sequence listing. MPEP section 2421.03, page 2400-20, states that "Upon detection of damage or deficiency, a notice will be sent to the applicant detailing the damage or deficiency and setting at least a 30-day period for reply." Applicant did not receive such notice prior to the abandonment of the application, or any time period in which to correct the errors or deficiency in the sequence listing. Also stated in MPEP section 2421.03, page 2400-20 is, "When an action by the applicant, such as a reply to a Notice to Comply from the Office, is determined to be a bona fide attempt to comply with the rules and it is apparent that compliance with some requirement has inadvertently been omitted, the applicant may be given a new time period to correct the omission." Applicant's Amendment After Final Rejection filed on September 12, 2001, providing the required corrected sequence listing and again canceling claims 10-16, constitutes a bona fide attempt to comply with the rules, and it is apparent that compliance with the sequence listing rules was inadvertently been omitted. Therefore, Applicant should have been given a new time period to correct the omission.

However, Applicant was not provided notice and an opportunity to correct the omission. Applicant never received a notice to reply to the errors displayed in the Raw Sequence Listing Error Report, and subsequently, on January 3, 2002 Notice of Abandonment was mailed to Applicant. Therefore, it is respectfully submitted that the holding of abandonment should be withdrawn.

Thus, Applicant hereby petitions for the withdraw holding of abandonment. This petition is filed within one year of the date of abandonment. While this Petition is dated more than two

months after the Notice Of Abandonment was received, Applicant earnestly requests consideration of the Petition, as substantial time was required to research the issues involved.

Respectfully Submitted:

--Blissard et al.--

By: Thomas T. Aquilla
Thomas T. Aquilla - Reg. No. 43,473
Attorney for Applicant

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Dated: March 26, 2002